

XXV.—*THE SALMON FISHINGS IN THE RIVER TWEED: A Letter addressed to William Clayton Walters, Esq., by R. Weddell, Esq.*

THE questions you put respecting the Salmon Fishings in the river Tweed have often engaged my attention ; but the most of them are attended with such doubt and difficulty, that I have never arrived at any satisfactory conclusion with respect to the tenure under which many of these fishings are held.

I may premise that nearly the whole of the fisheries on the south side of the Tweed from the sea to Scotland anciently belonged to the Bishop of Durham, and were generally called “the bishop’s fishings,” while nearly the whole of those on the opposite side of the river from the sea to Paxton in Scotland belonged to the crown of Scotland (afterwards to the crown of England), and were usually denominated “the king’s (or queen’s) waters of Tweed,” or “the royal fishings of Tweed,” and the like. That the soil of the whole of the borough of Berwick including the adjoining lands on the north side of the river, including that of the river itself to the *filum aquæ*, belonged to the crown I have no doubt. The ancient grants of the kings of Scotland (and the English monarchs, as they from time to time were possessed of the borough by right of conquest, followed their example implicitly, and in fact, by various charters and other writs, and also by acts of parliament, confirmed to the burgesses and other inhabitants and proprietors the ancient laws and customs of Scotland, from

the reign of Edward I. to that of James I. both inclusive), completely establish this fact. Thus, for instance, Alexander III., Edward I., and Robert de Brus, demised the lands, revenues, &c., of Berwick (with the exception of the great customs of wool, &c.) to the burgesses, subject to an annual rent payable to the exchequer of England or Scotland, as the case might be ; and the English and Scottish monarchs from time to time granted estates and parcels of land within the borough to private individuals in fee, subject to certain payments and other services. It seems to have been recognized as an undisputed point of law, during the reign in particular of the three first Edwards, that upon the reconquest of Berwick by the English, all the grants, not only of the Scottish, but also of the English kings, became *ipso facto* void, and that the whole territory devolved upon the crown. That the soil in Norham and Islandshire, including in like manner that of the river Tweed to the mid-stream, belonged to the Bishop of Durham, I cannot assert with the same confidence, but I believe the fact is so. He was Count Palatine of these districts, as well as of the southern parts of the county of Durham, and he had *jura regalia* in both.

The earliest writs I have met with respecting the fisheries in the Tweed are published in the appendix to Raine's *North Durham*, Nos. DCCXXVII. and DCCXXVIII. They are from Bishop Ralph Flambard (between 1099 and 1128), and relate to the fishery of Haliwarestelle (*nunc* Hallowstell), which is close to the mouth of the river, the fishery of Sandstell only intervening between it and the deep sea. You will observe that the bishop gives to the Church of St. Cuthbert an estate called Eldredene (*nunc* Allerdean in Norhamshire) and Haliwarestelle, but without specifying the nature of the fishery, but by the subsequent writ to his sheriff of Norham he commands him to give the monks *seizin* of the fishery ("et præcipio tibi ut cito eos inde et sine omni contradictione *saisias*"), and if he refused to do so, then he ordered his nephew Ralph to give them *seizin* ("quod si facere distuleris tunc præcipio ut Raulfus nepos meus sine mora Sanctum Cuthbertum et monachos ejus inde *saisiat*"). The words "*saisias*" and "*saisiat*," I presume imply that the *soil* belonged to the bishop. The other fisheries belonging to the bishop I presume were held under the same tenure. Among the fisheries on the south side of the Tweed which did not belong to the bishop, were the Pool, Woodhorn, &c.

respecting which you will see various documents in Raine's appendix from page 132 to 134. In the first, No. DCCXLVII. (in the early part of the thirteenth century) the Pool is merely called "*totam piscariam de Pol*," and other fisheries are not more particularly described. In No. DCCCLIV. the ancient mode of fishing the two fisheries of the Pool and Woodhorn is minutely described. In the confirmatory charter of Edward I. to the Abbey of Alnwick (not published), is an *inspeximus* of various grants, among which is one of William de Vescy, whereby he confirmed to the abbey his fisheries in the Tweed, ("*piscaturas meas in Twedâ cum omnibus pertinentibus et libertatibus suis*."). These fisheries consisted of Ellstell (which adjoins Hallowstell on the west) and the Start on the south side of the river, and Outwaterstell on the north side. In the grants from the kings of Scotland and the subjects of that realm to the monasteries, &c., of Scotland, the fisheries are not more particularly described: thus William the Lion confirmed to Kelso Abbey, "*dimidiam partem unius piscaturæ quæ vocatur Berwickstreame*." In a subsequent part of the Kelso chartulary the monks say "*Item habemus in eadem villâ [de Berwico] multas alias terras*," &c. "*et ex dono Johannis de Huntendon quandam piscariam quæ vocatur Folestreame*." David I. confirmed to the abbey the gift of Bernard de Baliol, "*videlicet quamdam piscariam quam habuit in Twedam*." Hugh de Baliol also confirmed this charter of his ancestor Bernard de Baliol, viz: "*de quadam piscaria quæ pertinebat ad Woodhorn et vocatur Woodhornstell in flumine de Tweda*." In Bernard's own grant it is described, "*aquam piscatoriam in Twede quæ pertinebat ad Woodhorn*"—"ad piscandam cum retibus eorum." Richard de Marisco, Bishop of Durham, also confirmed this grant and the grant of another fishery called Redhow by the following description:—"piscarias de Woodhorn et de Redhow cum omnibus aysiamentis prædictis piscariis pertinentibus. Dedimus etiam [inter alia] tres acras terræ quæ sunt super ripam fluminis Twedæ contiguæ piscariis de Woodhorn et de *Blakewell* cum communa et omnibus aysiamentis quantum pertinet ad tantum terræ in villa de Tweedmouth." William Masculus also quitclaimed to them his interest "*in piscariam de Redhow*," and admitted that he had no title "*de aliqua piscaria quæ sit vel fuerit inter Pool piscariam scilicet de Orde et piscariam de Blakewell*." In another deed he confirmed the grants made by various of his relations "*de piscaria de*

Redhow," and moreover granted to the monks that they should have "scalingum suum super terram meam de Twedmue sicut hucusque habuerunt et palos suos figant super eandem terram ad retia sua siccanda sicut hactenus facerunt." (A similar privilege, called "a net green," is enjoyed by most of the fisheries in the Tweed.) Robert de Brus, in a confirmatory charter to Jedburgh Abbey, describes their fishery as "unam aquam liberas solutas et quietas et Edwardesley sicut eam pater meus perambulari et divisas monstravit," and in another charter as "unam aquam quæ est contra insulam quæ vocatur Tonsundhope Edwardesli." In the chartulary of that abbey is a copy of an inquisition "anent the fishing of Aldstell" (on the north side of the Tweed) "claimed by the Abbot and Convent of Dunfermling" in the court of the sheriff of the county of Berwick held at Edinburgh in 1480, when Berwick was in the hands of the Scots, by which it was found "that since they are two cobles and two nets, there are two draughts for each coble, and each net a draught." By the charter of David I. to the monks of Melrose he confirms to them "in aquis de Thueda infra terminos eorum piscaturam tam ex mea parte fluminis quam ex eorum partem ubique." The same king gave to the Church of Dunfermling "*tractum* de Aldstelle et omne quod juste ei pertinet et unum toftum in Berwick solum et quietum de omnibus servitiis," and in a subsequent confirmatory charter he describes this fishery and other premises thus: "unum rete et dimidium et unam mansionem in burgo Dunfermeline": also "*tractum* de Aldstelle et omne quod juste ei pertinet. Tractus iste datus est scilicet in Berwick libere et quietus": also "quandam piscaturum apud Perth ita libere et quiete sicut meas ibi habeo." In 1467 (while Berwick was in the hands of the Scots) a dispute arose about "the marches, divisions, and rights betwixt the fishings of the Aldstelle pertaining to the Abbot and Convent of Dunfermling, and the fishing of the Calet pertaining to James III. and the mailors [rent-payers, tenants] and occupiers of it. By virtue of the king's mandate an inquisition was held before the bailiffs of the borough of Berwick, who returned that the jury had found that "as for the nets of the Calat, [they] shall set their staves and lend [land?] above the 3 stones and lend [land?] on their own land, and swing where they will. Item, the Aldstelle pertaining to Dunfermling shall stand at the 3 stones, the man with the land toll, and pass

up and set over their nets with roath with a tow of 24 fathoms and shoot at their advantage when and what time where they like, and keep their bounds having nets in the Aldstell as long as the Englishmen uses for-nenst them, ayquhill [until] the king's water bailiff makes rules in the water." This, it appears, did not terminate the dispute for in 1479 the records of one of the supreme courts of Scotland, called "*Acta Dominorum Concilii*," contain the following entry: "Anent the fishing of the Aldestell in the water of Tweed claimed by the abbot and convent of Dunfermling, the lords ordain that knowledge be taken by an inquisition of the best and worthiest that best know whether the said abbot and convent should by reason of their old charters and feoffments have the whole fishing of the Aldstelle or but a draught in the water called the Aldstell; and that this knowledge and inquisition be taken in Edinburgh the 8th day of May with continuation of days, and certain persons of Berwick to be warned to be at the said day to pass upon the said inquisition: and in the mean time, while the said day, that the s^d fishing be laboured by the persons that labour it now, but [without] prejudice to the abbot of the possession that he claims. And if the abbot recovers the whole fishing he to have the whole profit thereof." In a charter of David I. to the Abbey of Arbroath, their fisheries are described thus: "*unum rete super aquam meam de Perth—et unum plenarie rete super aquam de Northesk—cum piscaria illa quæ pertinet ad terram illam*" [de Portincrag]. The same king also gave to the Church of the Holy Cross of Edinburgh "*unum toftum in Berwyce et tractum duorum retium in Scypwell*" [in aqua de Twede] "*et unum toftum in Renfrew quinque perticarum et tractum unius retis ad salmones et ibi piscari ad alleria libere,*" &c. Robert de Brus gave to John de Roos and John Lyon, among other forfeited tenements of an Englishman, the following fisheries in the river Tweed: "*piscarias de New Water, Hundwater, Cole, et de Abstelle ac unum rete in piscaria de Totingford cum pertinentibus.*" The charters of the English kings are to a similar purport, and in a similar form. Edward III. gave to Robert de Horncliffe "*piscariam suam in aqua de Twede vocatum the kynges watere,*" and to Thomas de Balmbrough and Robert de Tughale his "*piscarias in aqua de Twede videlicet piscariam de Edermouth, Totyngford, Folstreme, North Yarewyk, Hundwater, Lawe, Abstell, et Tyt quæ quidem piscariæ ad*

villam regis de Berewico super Twedam pertinent et piscariam de Brade quæ pertinent ad villam de Paxton" (in Scotiâ) "et quæ ad manus regis per forisfacturam quorundum hominum de Scotia devenit." In another writ he mentions having made a lease of "terciam partem piscariarum de Orrit streme et Butershote sextam partem et medietatem unius piscariæ de Brodi," &c., &c. "in aqua de Twede." So he gave to William de Prestfen "piscariam de Edermouth," and to Robert de Tughale "piscarias de Crabwater et Holmannes in aqua de Twede," and to Edward de Letham he committed the custody during pleasure "piscariarum in aqua de Twede videl. de Humewater et Abstell et pro uno rete de Totinford pro uno rete de Tyte et pro uno rete in piscaria vocata le Folestreme." There is much more to the same purport in Rymer's *Fœdera*, the *Rotuli Scotiæ*, the Calendar of the Patent and other Rolls published by the Record Commissioners, and the Scottish Chartularies in the Library of the Advocates in Edinburgh, which are the principal sources from whence I have collected the preceding information. Hitherto, you will observe, no phrase exactly equivalent to "free" or "several" fishery has occurred, nor is there much to indicate what right the owners of the fisheries had in the soil. Some light, however, is thrown upon this part of the subject by the *names* of some of the fisheries themselves, or part of these names. Thus we have subjoined to, or incorporated with, the names of several of the Tweed fisheries the word "stell" (in *Abstell*, *Ellstell*, *Hallowstell*, *Adstell*, &c.,) "yare" (in *North Yarewick*, *Yardford*, &c.,) "wear," (in *Halliwearstell*,) and "flete" (in *Hallowflete*, &c.) Our present modes of fishing, (excluding "stake-nets," which are only of very recent origin,) are by *stell*-nets, *wear*-shot, and ring or bob-nets. The wear-shot net is rowed by means of a boat into the river in a circular form, and is immediately drawn to the shore. The stell is a net of a similar shape, and is likewise rowed into the river, but in a semicircular shape. A rope attached to one end of it is held by the fishermen on shore, and to the other extremity is attached an anchor, which is fastened in the bed of the river. The fishermen in the boat then go to near the centre of the net on the outside of it, and take hold of it, and when they either feel fish strike against the net or see them approach within its reach, they give notice to the men on shore, and while the latter haul in their end of the net, the men in the boat hoist

the anchor, and row with it on shore. The ring or bob-net is a long net without any bosom (which the other nets have), and is fixed in a straight line, perpendicular to the shore, in the river, by a stone or anchor at the one extremity in the river, and to a post or *ring* on the shore. This description of net does not, like the others, require the constant attendance of the workmen. The meshes of the bob-net are sufficiently large to allow the *head* only of the salmon to go through them, and when they find they cannot proceed they attempt to turn, and are caught by the gills, and the workmen at their leisure remove them from the net. Both this and the stell-net therefore require such a use of the soil of the river as seems to imply that the owners of the fisheries where they are used have some right to the soil. Independently of this, at all the fisheries in the Tweed, the workmen exercise the right of walking over and along the adjoining shore while drawing their nets from the river. They also exercise the right of *drying* their nets on the adjacent banks, called "a net green," (but, as has already been seen, some of the owners of fisheries acquired this right from the owners of the banks), and to many of the fisheries on the Tweed is attached a building called a "shiel" or "shield," in which the fishermen at certain seasons keep their nets, &c., and use as a dwelling; but this may be a mere easement obtained by the consent of the owners of the adjacent ground. I do not remember, at the present moment, more than one instance near Berwick, where the owner of the soil adjacent to the river is also owner of the adjacent fishery. The exception is the Corporation of Berwick, who, during the Commonwealth, finding that no one claimed a right to fish in the Tweed opposite a parcel of their ground called "the coroner's meadow," established a salmon fishery there, and have possessed it ever since.

When I had got thus far I was favoured with your letter of the 4th, and as I now see you will require something more than I originally fancied would be sufficient, I shall, before tracing the history of the Tweed fisheries downwards from where I have stopped, look over a mass of papers I have upon the subject, and give you the result. My materials, unluckily, are not arranged, and you must be good enough to pardon me therefore if I do not give you the information they furnish in

a systematic form. My principal authorities are Dugdale's *Monasticon* (the old edition) Chalmer's *Caledonia* (a work from which you will derive much information about the Scottish fisheries generally, and a perusal of which induced me to refer to the chartularies quoted by him), and the works I have already referred to, and a few others.

As to the names of fisheries—

WEAR: "Quandam piscariam apud Redleim quæ dicitur Wewaria" (Ayloff's *Cal.* 35.) "Quandam piscariam apud Redleim apud Newerra," (1 *Monast. Angl.* 884.) "Quatuor centum anguillarum de redditu piscarii mei de Wiltone—habenda scilicet septem estikes de gurgite qui vocatur Lodwere," &c. (2 *Mon. Ang.* 880.) "Et sunt administros v piscariæ et dimidia, scilicet Etsieswera" (1 *ibid.* from *Doomsday*). The boundaries of land in Monmouthshire, "scilicet rivulus quæ vocatur Servan vadit apud orientum et totum *weram* Cradoci" (afterwards called "*fontem* Cradoci") usque ad viam quæ tendit apud catteshasse" (*ibid.* 590.) "Parvam *weram* quam dedit Odo" (*ibid.* 983.) In Wales "piscariam de Walwere, Halfwere, Badingwere, cum omnibus pertinentiis suis";—"piscariam de Astlandwere, Plumwere et Alswere" (*ibid.* 721, 722.) *Vide* also same vol. p. 260, 261, from which it is shewn that "*weras*" was a Saxon word.

FLETE: *Hallowflete* alias *Haliwarestelle* ut supra. "Insula quæ vocatur Santoft, cum omnibus pertinentiis suis et cum piscariis quæ vocantur *Careflet*." (1 *Mon. Ang.* 405.) "Munkeflete cum omnibus piscariis suis" (*ibid.* 405.) "Submersus est apud Warflet." (*Ibid.* 308.)

LADE: "Piscariam de Westlode": "Quandam aquam quæ vocatur *Westlade* cum piscariis": "Unum ductum aquæ nomine *Westlade* (*Ibid.* 306 to 308.)

YARES: One reference may suffice. The Earl of Lennox, in 1273, granted to the monks of Paisley liberty to take wood from his forests and stones from his grounds for repairing the fishing *yares* in the river Leven, and fifty years previously they had had a grant from another person of "a *yare*" in that river. (1 *Caledonia*, 784.) *Vide* also 2 Tytler's *History of Scotland*, p. 223 and 224, respecting "*yaris*," "*retes*," and "*stell*" fishings, and 1 Surtees' *Durham*, pt. 2, p. 256, respecting the "*yares*" in the river Wear: also his 2nd vol. p. 109, for "*yares*," "*pools*," "*Stelentes*" ("*stell-*

nets?") &c. In "*Piers of Fulham*," one of the metrical tales published by Hartshorne (p. 119, 120,) we have the following lines :—

" But in reunyng ryvers that bee commone
There will I fish, and take my fortune
With nettys and with angle hooks
And lay *weris* and sprenteris in narrowe brookys," &c.

STELL: Sufficient references have already been given to this word. (See also Rayne's *Ap.* No. 179.)

TRACTUM; RETE; NET GREEN; SHIEL, &c. &c.: William de Mordington gave the monks of Coldingham a fishery in the Shipwell with a *stell* net. (Raine's *App.* No. CLX. and 1 *Caled.* 516.) David I. granted to the monks of Holyrood 2 *retes* in the Tweed. (*Ibid.* 784.) He also gave the monks of Dunfermling "*tractum* de Auldstell" in that river. (2 *Do.* 320.) Walter de Kilnum gave the convent of Melrose 8 acres of arable land upon Wite-lawestele. (Morton's *Monastic Annals*, 267.) Edward III. gave to Robert de Horncliff the king's fishing in Tweed called "the King's Water," usually held by the Constable of Balmbrough. (*App.* to Hodgson's *Northum.* from the "*Originalia*," p. 304.) The Tweed fisheries called Orret *stream* and Bull *shot*, mentioned in a writ dated 10 June, 1334, published in the *Rot. Scot.* The fisheries of Braythewer and Neuflet. (1 *Rot. Parl.* 205.) The burgesses of Melrose had a right to the fishings in the North and South Esk, "in croisyaris et retibus antiquitus consuetus." (Robertson's *Index*, 87.) In 50 Edw. III. a complaint was made to the parliament of nets being used less in the meshes than the assize, and of *weres* being put into a tributary of the river Thames. (1 *Rot. Parl.* 331.) See in the *Rotuli Scot.* writs dated respectively 8 Aug. 1475, 26 March 1487, 14 Oct. same year, 5 Sept. 1489, 12 Sept. 1490, and 4 April 1491, respecting a dispute between the English and Scotch about the right of fishing on the bank of the Esk, and of erecting a "fish garth" in the river—namely, a hedge or inclosure of wood. This is a common mode of fishing in some parts of Scotland to this day. The "fish garth" is called a "cruive." It is made of wood, and has *traps*, &c. into which the fish on ascending the river enter, and from which they cannot escape. Sometimes the fisheries in the Tweed seem to have been appurtenant to estates. (See Raine's *App.*, Nos. 5, 6, 15, 18, 24, 44, and 106.) One of these fisheries Swain had

made and freed from stones, when he possessed Fishwick—the next adjoining estate in Scotland to Berwick on the north side of the Tweed. Henry earl of Northumberland, the son of David I. granted to St. Cuthbert and his monks a fishing in the river Tyne called “Bradjere,” with the “*croc*” that belonged to it. (*Ibid.* No. 110.) Thomas de Aslabby and wife gave to the prior and monks of Finchale “*piscariam nostram in Tyna quæ vocatur croke.*” (3 Surt. *Durham*, 204.) “To the rector of Gateshead belongs the fishery of Friar’s Goose, *with the liberty of drying nets.*” (2 Surt. 119.) The bond tenants of Chester-le-Street, tempore Bishop Hatfield, rendered for each oxgang 2½d. for *yare* silver, and the miller had the fishery in the Were. (*Ib.* 136.) Ed. I. had two “*retia*” in Edon, in the county of Cumberland. (1 *Rot. Parl.* 60 and 61.) Nicholas de Grenville gave to St. Cuthbert “*piscariam in Tine quod vocatur Bradajere.*” (.... Hodgson’s *North.* 132, 133.) Hexham Abbey had “*communiam pasturæ in le stele*” and “*duas piscarias in aqua de Tyne et unam placeam ad siccanda retia sua.*” (2 *Monas. Angl.* 94 and 87, pro 95.) This is also mentioned by Hodgson, from the Charter Rolls 27 Ed. I. dated 23 Nov. 1298. Malcolm IV. gave the monks of Melros “*unum rete in Berewick streme de duobus retibus meis quæ habiu in Berwick streme.*” (2 *Caled.* 320. from the Melros Chart. which has been recently printed by the Bannatyne or Maitland Club—but I have neither seen the original nor the print.) Chalmers (1 *Caled.* 785) mentions that there are several STELL-fishings on the shores of the Solway, and in several of the rivers along the east coast of Scotland. Walter Fitz Allan granted to the monks of Paisley *one net’s* fishing for salmon. (3 *Caled.* 801.) The Earl of Lennox gave them the right of fishing “*per totum lacum meum de Levyn,*” (Loch-Lomond) with the *liberty of drying their nets on the banks.* (*Ibid.* 857.) I find one solitary instance in ancient times of the use of the word “*libera*,” as descriptive of a fishery: “*libera piscaria in aquâ de Avene omnibus diebus, præterquam diebus dominicis.*” (2 *Monas. Angl.* 832.) “*Piscaria de Hasepole alias Hersepol.*” (*Ib.* 71.) With respect to YAIRS and CRUIVES, *Vide* 3 Tytler’s *Scot.* 211, and 2 *Acts of the Parl. of Scot.*, p. 5, referred to by him. The dean of Chester had “*piscariam in ripâ de Were et decimam piscariæ.*” (3 *Monas. Angl.* 44.) An Irish monastery had “*unum batellum et unum rete ad piscationem de Banne.*” (2 *Mon. Angl.*

1019.) “*Meum navicellæ unius piscationem in Witlamere.*” (1 Do. 850.) “*Unum batellum in aqua de De.*” (2 Do. 261.) Grants to the hospital of Conyngssheved in Lancashire: “*Totâ aquâ de Craike, cum piscaria et piscatione et cum omnibus partinentiis suis:—et piscatione cum retibus et uno batello in aqua de Thurstaness-water:—Eltes water, Eskessakbec—Hoge BAT.*” (2 Do. 425.) “*Unum BATUM in piscaria Cestriæ in aqua quæ vocatur De.*” (*Ib.* 281.) I may here mention that there are various fisheries on the south side of the Tweed, between Berwick bridge and the sea, which are called “BATS”—such as “Bailiff’s BAT,” “Davies’ BAT,” &c. Upon these fisheries (and also upon others not so denominated) are heaps of stones called BATS, upon which the nets are drawn when there is no means of landing them in the usual way (from the bank of the river being steep). “*Totam piscariam et piscationem fluminis de,*” &c. (*Ib.* 300.) “*Totam decimam piscium de portu meo*” (Hen. II.) “*de HONFLET*” in Lincolnshire. (*Ibid.* 316. “*Magno vicario et prato FISFLETE.*” (*Ibid.* 324.) “*Unam piscariam quæ vocatur Kimseswere.*” (1 Do. 527.) “*Quinque millia anguillarum in Weiles et unam piscariam quæ vocatur Rawerre.*” (*Ib.* 665.) I observe I have another ancient instance of the use of the words “free and several:” “*LIBERAM ac SEPARATAM piscariam in aqua de Ouse.*” (*Ib.* 685.) Edward Bruce gave to the prior of Whit-horn the half of the salmon fishing in the river Dee, “*et COMMUNEM TRACTUM piscariæ in aqua de Dee juxta Kircudbright ubicunque voluerint et viderint expedire.*” (3 *Caled.* 293.) Grant of a cottage in Estingdem, “*et libertate piscandi in aqua de Wanspike.*” 30 June, 15 Hen. VI. (Hodgson’s, *App.* p. 391.) According to Chalmers, (1 *Caled.* 783.) and I think he is right, the right of fishery in Scotland belonged to the Crown. I do not refer you to Skene, because his publication is so incorrect, even if his materials were authentic, which in many instances they are not, that he would only mislead.

I shall now proceed with the *Tweed* fisheries alone in more modern times. In 1562, under a commission from Queen Elizabeth, a survey of all her majesty’s “town of Berwick, messuages, fishings,” &c. was made, and a contemporaneous copy is preserved among the Corporation’s archives. The description of the burgages in the town is most minute. The owner of each is given, with the extent of his messuage—the rent

payable in respect of it to the crown—and his title, tracing it up in general to some grant from the crown, and this latter part is generally commenced thus: “and he *conveyeth* title in the right of,” &c., specifying the previous wills, conveyances, descents, royal grants, &c. This particular minuteness is not observed in the survey of the fisheries. The rents are in no case specified, nor is the title deduced. As it is not long I shall give you a copy of the whole, premising that it does not comprise any other fisheries than those which belonged to the crown, and that (as appears by other records) they were all then let to burgesses of Berwick, under the peculiar privilege granted to them by stat. 22. Edw. IV. c. 8, and also, as will be noticed, that they are all called “several” fisheries.

“The names and contents of sundry Waters and several Fishings within the liberties and bounds of the said town,” [of Berwick] “beginning at the uttermost bounders towards Scotland, upon and in the river of Twede:—

“Broade Water Fishing, in the same river of Twede, being the next several fishing extending to the uttermost bounder towards Scotland, containing in length down the said river towards the said town of Berwick, 128 polls, of 4 cobles; it is in the tenure and occupation of Cutberde Strother, Oliver Selby, and Thomas Burrell. It is worth, per annum and conveyeth their title by

“Edermouth, a several fishing in the said river, containing in length 76 polls, 2 cobles, in the tenure and occupation of Jennet Pawpert, George Morton, and John Shotton. It is worth, per annum

“Newater Fishing, a several fishing, containing in length 52 polls, one coble, in the tenure and occupation of Thos. Carlile. It is worth, per ann. . . .

“Annosyde, a several water in the queen’s majesty’s hands, containing in length 100 polls. This is a good fishing, and not occupied of twelve years now last past.

“Yarrow Stell, a several fishing containing in length 60 polls of 2 cobles, in the tenure and occupation of Thomas Thompson and George Morton. . . .

“Abstell, a several fishing containing in length 40 polls of 2 cobles, in the tenure and occupation of George Morton, Jennet Pawpert, John Shotton, and Wm. Walles.

“Several waters of the queen’s majesty’s, containing in length 136 polls by the high water mark, extending down the said river unto the castle wall is

esteemed no fishing water; and between the castle wall and the bridge there is a hole for a standing net," [viz. the ring or bob net already referred to] "which the constable of the castle hath used as appurtenant to his office.....

"WATERS BENEATH THE BRIDGE:—

- "Callot, a several fishing beginning against the new tower, near the Palace Brewhouse, extending to the stone rock in the stream, containing in length .. polls of 3 cobles, in the occupation of Thomas Bradforth, John Barrow, Thomas Thompson, and the Alderman of Berwick, for the use of the kirk. It is worth per annum and conveyeth ...
- "Adstell, a several fishing beginning at Callot aforesaid, and extendeth to the other rock there, containing in length .. polls, and is of 2 cobles, and in the occupation of George Morton, John Shotton, Thos. Thompson, Ralph Ferror, and Rich. Cook. It is worth, per ann. and conveyeth
- "Outwater Stell, another several fishing, beginning at Adstell, and extendeth the length of a net to Crabwater. It is of one coble, and in the occupation of Thos. Carlile.....
- "Crabwater Stell, another several fishing there, beginneth at Outwater, and extendeth the length of a net, containing polls, of 1 coble. It is in the occupation of Jennet Selby and Thomas Thompson.....
- "Item, there is another several water called the Walback, not used to be fished of late time.....

[The last-named fishery was in the open sea, behind the pier.]

I have not seen among the title deeds of any of these fisheries to which I have had an opportunity of referring, any deeds of an earlier date than the reign of James I. That king, by letters patent under his great seal, dated 24 March in the second year of his reign, which were confirmed by a special act of parliament, granted all these fishings to Sir George Home, afterwards created Earl of Dunbar, his heirs and assigns, with certain valuable lands, &c. within the borough of Berwick, by the following description:—
"Ac omnes illas piscarias et piscationes nostrarum aquarum dicto burgo, de Berwico super Twedam spectantes sive pertinentes. Ac omnes aquas nostras regales et *locos piscasos* vulgariter nuncupatas. The king's waters of Twede infra dictum burgum de Berwico super Twedam et Dominium sive le Seignorie ejusdem burgi cum omnibus et singulis suis juribus libertatibus membris et pertinentibus universis nuper parcella terrarum et possessionum nuper assignata pro solutione vadiorum et regardorum capitane-

orum et soldariorum prædicti burgi de Berwico super Twedam. Ac omnes illas piscarias et piscationes nostras de et in aquis de Twede prædicta vulgariter vocatas Broad et Orrett infra dictum burgum de Berwico super Twedam et dominium sive le seignorie ejusdem burgi cum suis juribus membris libertatibus et pertinentibus universis":—To hold to the said Sir George Home, his heirs and assigns, to the sole and proper use and behoof of the said Sir George Home, his heirs and assigns, in fee farm for ever. To be holden of us, our heirs and successors, as of our manor of East Greenwich, in our county of Kent, by fealty only, in free and common socage, and not in capite nor by knight service, subject to the payment of the annual rent to the crown of £10. for "the King's Waters of Twede," and £8. for the fisheries called Broad and Orret. Now I imagine that by the words "*locos piscasos*" the soil in the "King's Waters" passed to the grantee, but I also imagine that the soil in Broad and Orret did not. You are aware that we could not levy fines or suffer recoveries of lands, &c. in Berwick in the Court of Common Pleas at Westminster, and that until recently we effected (or fancied we effected) similar purposes by feoffment and refeoffment—actual possession being given by the feoffer in each case, in the presence of the mayor and bailiffs and others. It was a common practice to execute such deeds with these formalities, of fisheries situate within the bounds of the borough—which perhaps would be considered as evidence that the soil of these fisheries belonged to the owners of the fisheries; but I cannot boast of the knowledge of our conveyancers in Berwick for long after the reign of Elizabeth. When looking through the title deeds of a salmon fishery in the sea, a few miles to the south of this, a few months ago, which had been prepared at Berwick, I found it called in some a "free" and in others a "several" fishery. In fact when perusing other title deeds of Tweed fisheries, I have often suspected that the framers of them, when using the word "several" in connection with more fisheries than one, meant "many" and nothing more. The fishery of Outwater Stell did not pass under this grant, but still remained in the hands of the crown until the reign of Charles I., as will be afterwards noticed.

As to the fisheries on the south side of the Tweed:—Those called "the Bishop's fishings" remained the property of the see until the reign of Elizabeth, but she on one occasion reserved them in her own hands, when she

restored the temporalities to a newly-elected bishop, and on the accession of James I. to the English throne, Bishop Tobye Matthew, and the Dean and Chapter of Durham, conveyed the shires of Norham and Island, with all their appurtenances, to the crown. (Raine's *Hist. of No. Durham*, 28, 29.) By a previous survey of these shires in 1561 (*ibid.* 16) it would appear as if they extended to the low water mark along the sea coast. On 10 April, 2 James I., that monarch, by letters patent under the great seal, confirmed by act of parliament, granted to Sir George Home in fee, as in the previous charter, all "the Bishop's fishings" in the Tweed, among other valuable possessions. (*Vide* a copy in Raine, p. 32 to 34, *n. l.*) You will observe that the premises are described in this order:—1st. Norham castle, 2. the Lordship or Manor of Norham, 3. the Lordship or Manor of Norhamshire, otherwise called Islandshire, 4th. the Fisheries ("omnes illas piscarias nostras") called Halliwellsteile, alias Hallowefleete, &c. to the said castle, manors, and lordships belonging—all of which late were parcels of the possessions of the bishoprick of Durham, &c. &c. All these fisheries are now severed from the manor. Lady Stanley, the sole child and heiress of the late Sir Carnaby Haggerston, is lady of "the manor of Norham castle," but does not possess any of the fisheries. With respect to the fisheries Start and Ellstell (on the south side of the Tweed, and which formed no part of "the Bishop's fishings") and the fishery of Outwater Stell on the north side of that river, which was no part of "the King's Waters of Tweed"—all having belonged, as already stated, to the monastery of Alnwick, and having come to the crown on the dissolution of monasteries, they were granted by Charles I., by letters patent under the great seal, dated 10 Feb., in the 12th year of his reign, to Francis Braddock and Christ. Kingscote in fee. That grant I have not seen. It comprised various other estates, and was so long that a copy of it would have cost at least £30., and the officers would not give me a parcel copy of it. It may be presumed to have been somewhat in the same form as that to Sir Geo. Home of the Bishop's fishings. After these grants by James I. and Charles I., the fisheries on the south side of the Tweed, (which were not part of the Bishop's fishings) called the Pool, South Yarrow, Hugh Shiel, Wen and Walton, are described to be *free* fisheries, ("liberæ piscariæ," Raine, 38.) and one in the township of Ord to be a *several* fishery ("se-

paralis piscaria," ib. 39). This was about the year 1639. In a lease, dated 1792, of a moiety of Ethermouth, on the north side of the Tweed, it is called merely "all that piscary," but the tenants covenant to keep in "repair the shields and stands belonging to the premises, and cleanse, level, and clear the grounds and channels thereof, and keep the wears, bounds, and marches, &c. in proper repair." In 1635, the Earl of Suffolk and the Lady Elizabeth his wife (a descendant of the Earl of Dunbar) conveyed all "the Bishop's fishings" to trustees by *feoffment*, by the description of "all those fishings and piscaries called," &c.—"and all and singular waters, &c. *net greens, pools, wears, vivaries,*" &c. In a conveyance, dated in 1639, of Tweedmouth Stell and Blakewell, they are described as "all those fishing waters called Tweedmouth Stell and Blakewell, (that is to say) the half fishing of Tweedmouth Stell every third year, in which third year there is eight sheet" [of net] "due in Blakewell, and the other two years 12 sheet by mutual interchange." In the same conveyance the fisheries of Broad and Orrett (on the north side of the Tweed) are included, described as "two hannets" [half nets?] "or one whole coblegate, containing 24 sheet of net of the fishings or fishing waters called Broad and Orret, together with the said two hannets of *meadow ground* called Broadshaugh." In 1653 other parcels of "the Bishop's fishings" are described as "the *several* fishings called Blakewell, Blaystone, and Witherings;" "the *several* fishings called Tweedmouth Stell and Gardo, with all *way leaves, passages, netgreens, shealds, stells, standing places*, common, and common of pasture," &c.; "the full fourth part of the moiety or of one coble's fishing in the *several* piscaries or fishing waters called Blakewell, Blaystone, and Witherings—the full fourth part of the *Coblegate* of the fishing or fishing water called New Water;—and one sixth part of the whole fishing water called Walton—with all ways, passages, net greens, sheels, &c. to the said fishings belonging, with free egress and regress to and from the same, with all ways, passages, landing places, net greens, and other easements, &c. upon the lands and grounds thereunto near adjoining, together with all pools, wears, vivaries, piscaries, stells, passages, common and common of pasture, landings," &c. &c. In 1661 the feoffees in trust of the Earl and Countess of Suffolk conveyed all "the Bishop's fishings," (except Bailiff's *Bat*) to a purchaser, by the

description merely of "all those fishings and piscaries," &c. In 1663 parts of Tweedmouth Stell and Blakewell are described as "all those the *several* parts of the bishop's fishings—namely, one fourth part of the fishing water of Tweedmouth Stell and Gardo, and one fourth part of *one of the cobbles* of Blakewell, Blaystone, and Witherings every third year as they change from Tweedmouth Stell to Blakewell, in lieu of the one for the other"; and in 1715 as "All that *Coblegate* moiety or half part of All that piscary or fishing water called Tweedmouth Stell and Gardo, and one fourth part of all that fishing water called Blakewell every third year, according to the customary manner." In the common recovery suffered at the same time the premises are thus described, "*Medietatem quatuor seperat piscariare in aqua de Twede vocat.*" &c., "*necnen quartem partem separalis piscariæ vocata Blakewell quelibet tertio anno secundum consuetudinem.*" &c. In 1775 parts of these fisheries are described as a moiety of "all those *several* piscaries or fishing waters called Tweedmouth Stell and Gardo—one fourth part of the piscary or fishing water of Blakewell, otherwise Blaystone and Witherings—according as the parts shift, viz. two years Tweedmouth Stell and Gardo, and one year Blakewell and Gardo, according to the known turns and courses as have been used and accustomed therein—with all fishings, fisheries, fishing places, *ring-net-stands*, pools, wears, vivaries, streams, net greens, shields, sands, sand beds, ways, mounds, banks, landings, landing places," &c. In 1642 a moiety of Pedwell (a fishery near Norham church) and other fisheries adjoining, is described as a "half part, being a *whole Coblegate* of and in all and every the *several* fishings and fishing waters called by the *several* names of Pedwell, Greenhill, and Wilford." Two other adjoining fisheries are described, in 1686, as "All those FREE fishings—called the High Bells and Low Bells," [not part of "the bishop's fishings"] "with full and free liberty to take and kill fish therein with boats, nets, lines, locks, fish guards, and other engines—with all other fishings, piscaries, fish-locks, dams, banks," &c., and in a common recovery suffered in 1683 of other fisheries nearer Berwick, on the south side of the Tweed, but forming no part of "the bishop's fishings," they are described as "one messuage," (probably the fishermen's *shiel* is intended) "and 20 acres of land overflown with water—and the *free* fishings called Hugh-Sheil, South Yarrow and Canny," &c. So

also in the fine and recovery relating to High and Low Bells above-mentioned in 1686, they are described as “the *free* fishing called the High-Bells and Low Bells,” and in a conveyance in 1766, with another fishery, as “the *free* fishings called the High-Bells and Low-Bells and Hob’s-hole.”

I can easily multiply these extracts, if you wish to have more.

I ought to mention that all the fisheries I have referred to since the reign of Elizabeth are within the flux and reflux of the tide, and that the Tweed is a navigable stream up to Berwick bridge, but no higher.

The legal authorities to which, on such occasions, I usually refer, are the fishery of the Ban case in Davis’ Reports, Hale’s “*de Jure Maris*,” Schultes on Aquatic Rights, and Coke upon Littleton, with Mr. Hargrave’s notes. I have not Plowden, but I have a note, that he lays it down that “by the word ‘fishery’ the soil will pass.” I have never examined the Glossaries with sufficient care to ascertain what is the meaning of the words of such frequent occurrence, which form component parts of the names of some of the fisheries in the Tweed. As a specimen of what may be expected from such a research, I would beg to refer you to Duncange, from whose work I extract the following: “*Stele*—retis genus vel pali in fluvio dispositi ad capiendos pisces. *Stellum*—locus palis circumseptus.” See also, “*Stelen-garda*,” “*Stellata*,” “*Stelliata*,” and “*Stelonata*.” “*Estalarius*, pali in fluvio fixi ad piscationem.”

I may further take the liberty of mentioning, that in 1826 I had occasion to consult the present Chief-Justice Tindal, on the part of the proprietors of Hallowstell and Ellstell respecting a trespass of which they complained, and in the case I laid before him I set forth a short history of “the bishop’s fishings,” with the necessary extracts from the grant of them from James I. to Sir George Home, including the grant of the manor, and stated that Ellstell was granted unto Braddock and Kingscott by Charles I., and then described the nature of net-greens, bats, shiels, stells, &c. His opinion was as follows:—“I am of opinion that the owners of the fishery of Hallowstell will not be able, under the circumstances stated in this case, to establish their claim to the soil between high and low water mark. The word ‘fishery’ does not of itself necessarily carry the right to the soil. The soil may be in the crown, or in the lord of the adjoining manor, whilst the fishery is another person’s. (See Hargrave’s *Coke* on

Litt. 122. n. 7.) And in the case of a grant from the crown, which is always very strictly construed, a grant of the fishery, without any words to denote the grant of the land covered with water, or the land between high and low water mark, would not pass" [the soil] "to the grantee, and the more general words which follow after the particular description would not, in the case of the king's grant, be of any assistance. (See the case of the fishery of the Banne. *Davie's Rep.* 55.) I therefore think the grant to Sir George Home did not carry to him the land in question under the description of 'fishery,' although under the word 'manor,' if the land between high and low water mark was always considered part of the manor he might have taken it. But that will make no difference as to the proprietors of the fishery, who claim the same through Sir George Home by a grant of the fishery alone, the manor having been previously granted to other persons. And as I think upon the construction of the royal grant the land did not pass, so the acts of enjoyment are of too equivocal a nature to lead to any presumption of a grant of the soil at any separate time—for all those acts are as well to be referred to an easement on the soil of another person as to a right to the soil itself; and I see no solid distinction that can be drawn between the shore between high and low water mark of the Ellstell fishery and that of the Hallowstell fishery which I have before considered. The grant of a right of fishery to a subject will not deprive the rest of the subjects of the land of the right to navigate the water, &c., but I think no subject has a right so to exercise the navigation of the water, or the landing from boats, or the anchoring them, or the reloading them, as to obstruct or disturb any other subject in a right which he has legally acquired. I think the proprietors of the fisheries may maintain an action for the injury they receive from the exercise of the several acts above referred to, in such a manner and to such an extent as to interfere with the enjoyment of the fishery before granted by the crown. Although however an action is maintainable, it would be very difficult to establish it by evidence against each individual, so as to show his excess in the enjoyment of his right," &c. &c. No action was brought.

I ought to have mentioned earlier that to the fisheries of Hallowstell, Ellstell, and the Carr Rock, belong respectively three fisheries in the sea, which (until the recent introduction of stake-nets) were only fished with

stell-nets. Their positions with respect to the positions of the fisheries in the river (the "far seas," the most distant, belonging to the Carr Rock, the fishery furthest from the sea, &c.) defy all explanation, nor is there a word in any of the title deeds to prove that the owners of these river fisheries have any right to fish in the sea. I enclose a rough plan to shew this curious anomaly, which you will be pleased to return at your leizure.

I shall now proceed to answer your queries seriatim:—

1. The salmon fisheries in the Tweed are not called either *several* or *free* fisheries in any of the *ancient* grants which I have seen, but in the title deeds they are variously described—sometimes as "fisheries," sometimes as "several" and sometimes as "free" fisheries.

2. The fisheries extend beyond the flux and reflux of the tide, as high up the river at least as Kelso, and I believe much higher. I am not aware that there is any difference between such fisheries, as to the right to the soil, and the others. The northern half of the river, from about three-and-a-half miles west from Berwick, is in Scotland. Some of the fisheries there adjoining the Berwick fisheries belong to persons who have no title to the adjoining lands—others I believe belong to the owners of the adjoining lands, but whether as appurtenant to the latter or not I am not aware. By the law of Scotland I believe all fisheries are royal franchises, but as already noticed fisheries seem to have been held with vils, but probably under one and the same royal grant. (See in particular, in Raine's *Appendix*, with respect to *Fishwick*, (a Scottish vill about seven miles from Berwick) and "its waters," Nos. 6, 24, 106, 158, 159, 160.) Higher up the river, on both sides, the owners of the lands are also owners of the adjacent fisheries, but I know nothing of their titles, further than that I remember a law suit between Lord Home, the owner of estates and a fishery near Coldstream in Scotland, and the owner of the estates and fishery on the opposite shore in England, near Wark, was tried at Newcastle about thirty years ago. The dispute was as to which of them a particular *bat* or *cairn* in the river belonged. It was proved to be to the north of the *filum aquæ*, and Mr. Justice Bailey ruled that that was the boundary between England and Scotland, and consequently Lord Home had the verdict—but no title deeds were produced on either side.

3. All the fisheries, both within and beyond the flux and reflux of the

tide (with the exception of ring or bob-nets) extend across the river, and not merely to the middle of the stream, and the owner of every fishery has a right to draw his nets through part of the fisheries on each side of him—alternately with the owners of these fisheries—that is, he may start from his own fishery, keeping the line of one end of his net on his own ground and row into his neighbour's fishery, if his neighbour's net is not there at the same time, taking care to bring back the line of the other end of his net to his own fishery and landing the net thereon. It thus happens—if the starting or landing place of a net belonging to one fishery is close to another fishery, that nearly the whole of the net of the former is at one time within the boundary of the adjoining fishery. This is called “shot and shot about,” and corresponds as nearly as possible with “commen per cause de vicinage.” The same practice holds as between the owners of fisheries on opposite sides of the river, but they also are entitled respectively to “their shot and shot about.” In some fisheries, at low water, the net of the fishery at one side of the river, when fully expanded, extends to within a few feet of the opposite shore.

4. Since the year 1817 the owners and proprietors of fisheries in the Tweed have exercised their own discretion, without control, as to the number of boats and nets, and the size of the latter, to be employed upon their respective fisheries. Prior to that year disputes frequently arose among the fishermen not only as to the number of boats and nets, but also as to the dimensions of the latter, which had a legal right to be used in each fishery; and at the Northumberland assizes in 1816, four causes (I was not employed for either party) respecting a dispute as to the boundary between Crab Water, Outwater Stell, and Abstell, and as to the proper mode of fishing, each was referred to Mr. Hopper Williamson, with power, “upon a view of the premises and examination of witnesses, to make such regulations for the future enjoyment of the rights of fishing of each party as he should think expedient to prevent disputes.” The arbitrator made his award in the following year, ordering a verdict in one cause to be entered for the defendant, and in the others for the plaintiffs, with nominal damages, and fixing the boundary between Outwater Stell and Abstell, (at least pointing out what “appeared” to him to be the boundary) after which he concluded thus:—“But the parties to this refer-

ence not having laid before me such evidence as in my judgment is sufficient to enable me to make any effectual regulations for the future enjoyment of their respective rights in the same fisheries, I have altogether abstained from exercising the power so given to me in that behalf, in and by the said recited rule as aforesaid." This was construed into an admission on the part of that able lawyer that each owner might fish his fishery as he thought best, and all parties have since acted accordingly. It is quite clear, however, that in prior times there existed regulations bearing the force of laws, not only as to the number of boats and nets which could legally be employed upon each fishery, but also as to the dimensions of the nets, the sizes of their meshes, &c. &c. Courts were established on both sides of the river for making regulations for the fisheries—the one in Berwick, the judge of which seems to have been the water-bailiff originally, of whose courts no records remain, and in more recent times disputes were settled in other courts within the borough; and at Tweedmouth a "fisher's court" was from time to time held from remote times until about the middle of the 17th century, when it was discontinued, after an ineffectual attempt to compel its continuance by a writ of mandamus. The records of this court were then in existence, but have since been lost. In addition to this the survey of "the queen's fisheries," tempore Elizabeth, proves that each fishery was only entitled to a limited number of cobbles and nets, and some only to one cobble and net each. The expressions in many of the title-deeds—one coblegate—two hannets—and the like, prove the same fact; and there is moreover proof from the title-deeds—such as the expression, a net containing so many sheets—that from ancient times the sizes of the nets were subject to regulation. The other rules, as to "shot and shot about" and the like, are still observed.

Lastly, there is no account in print that I am aware of, of the tenure of the Tweed fisheries.

Two or three acts have been passed for regulating the Tweed fisheries; but they I presume can be of no use to you. In other respects—as relates to the size of the meshes of the nets—our fishermen observe the general fishery acts. Those which I have referred to are—stat. 1 Eliz. c. 17; 3 Jac. I. c. 12; 30 Car. II. c. 9; 1 Geo. I. st. 2. c. 18; 23 Geo. II. c. 26; 18 Geo. III. c. 33; 45 Geo. III. c. 33; and 37 Geo. III. c. 95.

I shall be glad to give you any further information in my power, but I am sorry to say that I know nothing whatever of the salmon fisheries in the Tyne, further than what you will find in Brand's *History of Newcastle*.

I must apologise for troubling you with so long a letter, and for being so tardy in sending it.

I am, dear sir, your most faithful servant,

ROBT. WEDDELL.

Berwick, 7 Sept., 1830.

WM. CLAYTON WALTERS, ESQ.

